

Department of Energy

§ 711.45

(c) In each case of drug abuse, the SOMD, in consultation with the designated psychologist, shall evaluate the individual for evidence of psychological impairment and make a recommendation to the PAP certifying official as to the individual's reliability.

(d) If an individual successfully completes an SOMD-approved drug rehabilitation program, DOE may reinstate the individual in the PAP based on the SOMD's follow-up evaluation and recommendation. The individual reinstated will be subject to SOMD-directed unannounced tests for illegal drugs and relevant counseling for 3 years.

§ 711.43 Evaluation for hallucinogen use.

If DOE determines that a PAP individual has used any hallucinogen, the individual shall not be eligible for certification or recertification unless:

(a) Five years have passed since the last use of the hallucinogen;

(b) A medical evaluation, including a psychological test, is performed to determine that the individual is reliable; and

(c) The individual has a record of acceptable job performance and observed behavior.

§ 711.44 Medical assessment for alcohol use disorder.

(a) If alcohol abuse is suspected, an individual shall be examined for evidence of alcohol use disorder. If the examination produces evidence of alcohol use disorder, additional evaluation shall be conducted, which may include psychological evaluation.

(b) Alcohol consumption is prohibited within an 8-hour period preceding scheduled work and during the performance of nuclear explosive duties.

(c) Individuals in the PAP, including individuals who report for unscheduled work, may be tested for cause or reasonable suspicion of alcohol use or after an accident or an unsafe practice involving the individual.

(d) DOE shall implement or require the contractor to implement procedures that will ensure that persons called in to perform unscheduled work are fit to perform the tasks assigned.

(e) Tests for alcohol must be administered by a certified Breath Alcohol Technician using an evidential-grade breath analysis device approved for use at the 0.02/0.04 cut-off levels that conforms to the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) model specifications (58 FR 48705, September 17, 1993), and the most recent "Conforming Products List" issued by NHTSA which are available from the Office of Traffic Safety Programs, Washington, DC.

(f) An individual whose confirmatory breath alcohol test result is at or above an alcohol concentration of 0.02 percent shall not be allowed to perform nuclear explosive duties until the individual's alcohol concentration is below 0.02 percent using an evidential-grade breath analysis device described in section 711.44(e).

(g) Individuals subject to alcohol testing under DOT regulations shall be subject to the sanctions promulgated by the Federal Highway Administration rule. Appropriate disciplinary action will be taken under DOE's authority.

(h) Individuals refusing to submit to a breath alcohol test shall be immediately removed from nuclear explosive duties.

(i) The SOMD, in conjunction with the designated psychologist, shall evaluate each case of alcohol use disorder for evidence of psychological impairment and provide the PAP certifying official a recommendation as to the individual's reliability.

(j) After successfully completing an SOMD-approved alcohol treatment program, DOE may reinstate an individual in the PAP based on the SOMD's follow-up evaluation and recommendation.

§ 711.45 Maintenance of medical records.

(a) Medical records produced or used in the PAP certification process shall be collected and maintained on separate forms and in separate medical files, and be treated as a confidential medical record.

(b) The medical records of PAP individuals shall be maintained in accordance with the Privacy Act, 5 U.S.C.

552a and DOE implementing regulations in 10 CFR Part 1008; the Department of Labor's regulations on access to employee exposure and medical records, 29 CFR 1910.1020; and applicable DOE directives. DOE contractors also may be subject to §503 of the Rehabilitation Act, 29 U.S.C. 793, and its implementing rules, including confidentiality provisions at 29 CFR 60–741.23(d).

(c) The psychological record of a PAP individual shall be considered a component of the medical record. The psychological record shall:

(1) Contain any clinical reports, test protocols and data, notes of employee contacts and correspondence, and other information pertaining to an individual's contact with a psychologist;

(2) Be stored in a secure location in the custody of the designated psychologist;

(3) Be kept separate from other medical record documents, with access limited to the SOMD, the designated physician, the designated psychologist, or other persons who are authorized by law or regulation to have access; and

(4) Be retained indefinitely.

(d) The records of alcohol and drug testing shall be maintained in accordance with 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records," and 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites."

PART 715—DEFINITION OF NON—RECURSE PROJECT—FINANCED

Sec.

715.1 Purpose and scope.

715.2 Definitions.

715.3 Definition of "Nonrecourse Project-Financed."

AUTHORITY: 42 U.S.C. 7651o(a)(2)(B); 42 U.S.C. 7254.

SOURCE: 56 FR 55064, Oct. 24, 1991, unless otherwise noted.

§ 715.1 Purpose and scope.

This part sets forth the definition of "nonrecourse project-financed" as that term is used to define "new independent power production facility," in section 416(a)(2)(B) of the Clean Air Act

Amendments of 1990, 42 U.S.C. 7651o(a)(2)(B). This definition is for purposes of section 416(a)(2)(B) only. It is not intended to alter or impact the tax treatment of any facility or facility owner under the Internal Revenue Code and regulations.

§ 715.2 Definitions.

As used in this subpart—

Act means the Clean Air Act Amendments of 1990, 104 Stat. 2399.

Facility means a "new independent power production facility" as that term is used in the Act, 42 U.S.C. 7651o(a)(2).

§ 715.3 Definition of "Nonrecourse Project-Financed".

Nonrecourse project-financed means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by section 201(e) of the Federal Power Act, as amended, 16 U.S.C. 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants will not disqualify a facility from being "nonrecourse project-financed" as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from the revenues generated by the facility, rather than from other sources of funds. Projects that are 100 percent equity financed are also considered "nonrecourse project-financed" for purposes of section 416(a)(2)(B).